Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington,D.C. 20554

In the Matter of	)	
	)	
Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996	)	CS Docket No. 96-85
	)	
	)	

TO: The Commission

COMMENTS

C-TEC Cable Systems, Inc. ("C-TEC") and Mercom, Inc. ("Mercom") hereby respond to the Commission's Notice of Proposed Rulemaking in the captioned proceeding. FCC 96-154 (April 9, 1996) (the "*NPRM*"). C-TEC and Mercom comment below on two questions raised by the *NPRM*: (1) the definition of "small operator" under the 1996 Act and (2) the records required for franchise authorities to establish that subscriber complaints were received within 90 days of the effective date of a rate increase.

I. Only Cable Related Revenue Should be Counted Toward the $250 Million Cap on Gross Revenues for Small Operators under the Act

When Congress adopted the "small operator" exemption from CPS regulation, it plainly understood that it was expanding the definition of a "small cable operator" that the Commission had previously used. Congress relied on information from the National Telecommunications and Information Administration ("NTIA") that, if it defined "small cable operators" as those with fewer than 600,000 subscribers and less than $250 million in annual revenues, 28.8 percent of all subscribers would be served

by operators meeting that definition. H.R. Rep. No. 204, 104th Cong., 1st Sess. at 227. This is in contrast to the 12.1 percent of all subscribers that had been covered by the FCC's small operator rules. *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393, 7411 (¶¶ 2, 33) (1995) (the "*Small System Order*").

C-TEC believes that the 600,000 subscriber limit and the $250 million limit are intended to be roughly equivalent today, and that Congress relied on both -- a kind of belts-and-suspenders protection -- to provide stability to the level of CPS rate deregulation prior to sunset of regulation in March of 1999.

The legislative history to the provision indicates that, when NTIA was estimating for Congress the number of subscribers whose CPS rates would be deregulated, it relied solely on the number of subscribers served by companies with less than 600,000 subscribers, and did not consider that the revenue limit would currently affect the analysis. The only source cited by the NTIA, Warren Publishing, Inc.'s *Television and Cable Factbook,* does not even track companies' revenues.

Indeed, 600,000 cable subscribers today generate roughly $250 million in cable-related revenues. When the Commission established its own 400,000 subscriber limit for "small cable operators," it sought to approximate companies with $100 million in annual regulated revenue (or approximately $20.00 per subscriber per month in regulated revenues). *Small System Order* at 7405 (¶ 28). Using a similar analysis, a company with 600,000 subscribers and total cable revenues of $34 a month would generate $250 million in annual total cable revenues. C-TEC has not been able to

obtain current industry revenue data to confirm that total cable revenues per subscriber fall in the $34 range. But C-TEC does know that, company-wide, its average total cable revenue per subscriber per month (including regulated, non-regulated and advertising revenue) is approximately $35.47. If C-TEC had 600,000 subscribers, this would generate approximately $255 million in annual cable revenues. We have no reason to believe that C-TEC's revenues are far off the industry average. If Congress had intended the $250 million to serve as other than a backstop to the 600,000 subscriber number *(i.e.,* if Congress had intended the $250 million to cover revenues other than cable revenues), it would have made the number larger because -- based on C-TEC's revenue experience as a typical cable operator -- cable revenues alone for companies with 600,000 subscribers fall in the $250 million range.

We also find support in the Commission's own data regarding cable revenues. According to the FCC's *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* FCC 94-235 (Appendix C, Table 5) (Sept. 28,1994) (the *"Competition Report"),* revenues from regulated service in 1993 (the most recent available) accounted for approximately 67 percent of overall cable revenues. Applying the same $20.00 regulated revenue that the FCC used to extrapolate its 400,000 subscribers from $100 million in revenues, we would expect total revenue for the average system in 1993 to have been in the range of $30. Based on the Commission's expected increases in nonregulated revenues after rate regulation went into effect, an industry average total revenue in the range of $34 in late 1995

appears reasonable. Thus, there is ample support for the understanding that Congress intended to cover only cable-related revenues in the $250 million qualification.

The FCC should not make more of the $250 million number than was intended by Congress. If the FCC broadens the $250 million prong of the "small cable operator" definition to include non-cable revenues from any affiliated company, it will have the anomalous result in some cases of reducing, rather than expanding, the number of operators to which small system relief is available. Some companies that are subject to the Commission's small operator rules would not also be subject to the Congressional relief. Yet, it is clear that Congress intended its 600,000-subscriber-based definition of "small cable operator" to be broader than the FCC's 400,000-subscriber-based definition. Indeed, Larry Irving of the NTIA (the source of the "small system" data) expressed concern in hearings on the 1996 Telecom Act that Congress was expanding the number of operators that would be entitled to small system relief over the FCC definition. *Communications Law Reform, Hearings before the Subcommittee on Telecommunications and Finance, Committee on Commerce, House of Representatives*, 104th Cong., 1st Sess. 104-34 (1995) (statement of Larry Irving, Assistant Secretary for Communications and Information, Department of Commerce).

After a close examination of the legislative history of the 1996 Act and the relationship between regulated and overall cable revenues, it seems clear that Congress intended the $250 million to cap revenues from cable service generated by 600,000 subscribers. Congress was apparently concerned that if it relied solely on one of these numbers, a sudden change in either cable subscribers nationally or cable

revenues could significantly change the breadth of the deregulation. For example, if the number of national subscribers increased, more companies (and more subscribers) might suddenly be subject to deregulation if Congress relied solely on the 1 percent of national subscribers criterion. Similarly, if competition suppressed cable revenues, the number of subscribers subject to deregulation would increase if Congress relied solely on the revenue criterion. By relying on both numbers -- subscribers and revenues -- Congress could help to ensure some stability in the reach of rate deregulation. But were the Commission to treat the revenue limit as including non-cable related revenues, Congress' intent to expand the list of companies eligible for "small system" relief under the FCC's rules would be undermined.

Thus, there is ample support for the proposition that Congress intended to limit the revenues to be included in the $250 million calculation.

II. The Commission Should Adopt Recordkeeping Requirements to Ensure that Any Franchising Authority CPS Rate Complaints Filed With the FCC Are Based on the Receipt of Multiple Subscriber Complaints Within 90 Days of a Rate Increase

The 1996 Act prohibits subscribers from filing CPS rate complaints directly with the FCC. 1/ Instead, the Act provides that subscribers must submit complaints with the franchising authority within 90 days of the effective date of the rate increase. 2/ The FCC has established that at least two subscriber complaints must be received by a

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1/ Communications Act of 1934, as amended, at Section 623(c), 47 U.S.C. § 543(c).

2/ *Id.*

franchising authority within the 90-day complaint window to enable the franchising authority to file a CPS rate complaint with the FCC. 3/ The Commission speculated in the *NPRM* that "[t]he records maintained by [a franchising authority] in accordance with its regular business practice should be sufficient to establish that the [franchising authority] received the subscriber complaints within 90 days of a rate increase." 4/ This ambiguous standard will raise controversy -- indeed, it already has -- regarding the adequacy of records and of the subscriber complaints themselves. The Commission should clarify its rules to create a simple standard that will avoid any questions regarding the adequacy of subscriber complaints under the statute. The rules should provide that subscriber complaints must be in writing or that the franchising authority create a contemporaneous written record of oral complaints stating: the name, address and phone number of the complainant; date and time of complaint and precise rates complained of. The rules also should specify that complaints made by members of the franchising authority (e.g., Mayor, city councilman) should not count toward the two-subscriber complaint minimum.

CONCLUSION

In view of the foregoing, C-TEC respectfully requests that the Commission adopt rules to: (1) limit the revenues included in the calculation of "small system operator" under the 1996 Act to cable related revenues as Congress intended; and (2) adopt an easily verifiable standard by which to evaluate the adequacy and timliness of

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3/ *NPRM* at ¶ 21.

4/ *Id.*

subscriber CPS rate complaints on which the franchising authority must rely to file a CPS rate complaint with the FCC under the requirements of the 1996 Act.

Respectfully submitted,

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